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EXAMINER

NEUDER, WILLIAM P

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 19

Application Number: 09/312,352
Filing Date: May 14, 1999
Appellant(s): MACDONALD ET AL.

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GROUP 3600

Terry L. Wiles
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed 10/2/01.

A statement identifying the real party in interest is contained in the brief.

The statement of the status of the claims contained in the brief is correct.

No amendment after final has been filed.

The summary of invention contained in the brief is correct.

The appellant's statement of the issues in the brief is correct.

The rejection of claims 1 and 3-15 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The copy of the appealed claims contained in the Appendix to the brief is correct.

5,951,210	Maguire et al	9-1999
5,913,790	Dawson	6-1999

Claims 1 and 3-15 are rejected under 35 U.S.C. 103. This rejection is set forth in prior Office Action, Paper No. 13.

(11) Response to Argument

Appellant's first argument is that there is no reason to combine Maguire et al and Dawson. Appellant further states that Maguire et al teaches away from making the combination. While Maguire et al clearly sets forth that he believes his knobs 32 and grooves 30 arrangement is superior to pin and holes because the knobs and grooves will cause less tearing of the geogrid layer 50 placed in retaining walls, it is not believed that Maguire et al teaches away from the use of pin and holes. Clearly Maguire et al recognizes that pin and holes have been used in retaining blocks. Dawson clearly shows retaining blocks and retaining walls formed from these blocks using pins and holes to join adjacent blocks in the wall. Substitution of pins and holes for the knobs and grooves of Maguire et al would not destroy the retaining block of Maguire. Since

both Dawson and Maguire teach that pins and holes are well known means of joining retaining blocks, it would have been considered obvious to replace the knobs and grooves of Maguire et al with pins and holes as taught by Dawson and Maguire et al. This has been the only argument previously presented in the prosecution. In the Appeal Brief, Appellant makes further arguments, presented for the first time, which will now be addressed. Appellant asserts that even if the Examiner were correct in making the combination, the combination would not arrive at the claimed features. Specifically there is no disclosure in either of the references to align the pinholes and pin receiving cavities along first and second planes, which are parallel to a plane of symmetry of the block. Appellant alleges that the only way to arrive at this configuration is through the use of hindsight. While the secondary reference to Dawson does not meet this claim limitation, the primary reference to Maguire et al clearly shows the knobs 32 positioned basically on the neck portions. Clearly a plane through the knobs 32 goes through the neck portion and the grooves 30 parallel to the plane of symmetry. It is not improper hindsight that would arrive at this feature, merely common sense. If one were to replace the knobs and grooves of Maguire et al with pins and pin receiving cavities, one of ordinary skill in the art would place the pins in the same position as the knobs 32 and the pin receiving cavities in a position to receive the pins. This configuration would arrive at the claimed feature that a plane through the pins, receiving cavities and the neck would be parallel to the plane of symmetry. Appellant further presents the new argument that claim 3 adds the limitation that the first and second planes, which are parallel to the plane of symmetry, are midway between the plane of symmetry and the

laterally outermost points of the sidewall faces. Since the knobs 32 are positioned substantially in the identical place as Appellant's pins, clearly a plane through the knobs 32 would be substantially midway between the plane of symmetry and the sidewall ends. Appellant further asserts, for the first time, that the limitation of claim 4 that the receiving cavity has a rear wall substantially perpendicular to the plane of symmetry is not met by the combination of Maguire et al and Dawson. This argument is not understood. Clearly the receiving cavities of Dawson have walls that are perpendicular to the plane of symmetry. While the receiving cavities of Dawson are oval, there is a rear wall. Appellant further argues that the limitation of claim 5 calling for third and fourth pins disposed on the planes parallel to the plane of symmetry is not met by the combination. Clearly Maguire et al sets forth two pairs of knobs 32. Each pair of knobs is on the same plane. Further, Maguire et al teaches that his blocks can be arranged in a retaining wall having substantially zero setback. Appellant states that claim 7 calls for notches to form weak links in the neck wall members and that this limitation is not disclosed. The Examiner's position which has been previously set forth three times without Appellant commenting on this position, is that the use of notches to form weak links in concrete blocks is notoriously well known and it would have been considered an obvious design choice to incorporate notches in the block of Maguire et al. Furthermore, Dawson discloses weak links in sidewall 24. Appellant argues that the feature of claim 8 that a continuous cavity is formed in the retaining wall is not met by the combination. Figure 3 of Maguire et al shows the arrangement of the blocks forming a continuous cavity through the courses of blocks. Appellant argues that the

combination does not show rebar or a post in the continuous cavity held by grout. As previously stated, and never before addressed by Appellant, the incorporation of these well known retaining wall features into Maguire et al would have been considered an obvious design choice. Appellant argues that the claim 14 feature of using geogrid held by the pins is not taught. Figure 4 of Maguire et al clearly shows geogrid held by the knobs 32. In fact, the reason for Maguire et al using knobs and grooves instead of pins and cavities is to prevent tearing of the grid. With respect to claim 15, clearly the blocks of Maguire et al could be used to form a pilaster.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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November 16, 2001

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